

Hungary and the Pandemic: A Pretext for Expanding Power

Kriszta Kovács

2021-03-11T09:00:50

A year ago, the first lockdowns were introduced in Europe. Since then, European governments have been busy introducing Covid-19 containment measures, including social distancing rules and mask mandates. For two months, they have been vaccinating the people. Ostensibly, the EU countries have taken similar steps. This piece provides a sketch of how the Hungarian government has handled the pandemic.

In a Permanent State of Emergency

Since the last democratic elections in 2010, prime minister Viktor Orbán has been working toward authoritarianism by using countless 'crises' to consolidate his hold on power. While doing this, Orbán has been perpetually on a war footing. He has made sharp distinctions between political friend and foe to maintain a sense of constant crisis and felt inclined to '[wage war](#)' against the foes: against 'financiers', against 'illegal migrants', against George Soros 'who obviously holds in his pocket the EU and the "pro-refugee" NGOs', against 'terrorists', and most recently against Covid-19.

For years, Hungary has been in a state of emergency. In 2011, the ruling majority voted for a new constitution and [justified](#) its adoption with reference to the 2008 global financial crisis's consequences. Citing the 2015 migrant crisis threat, the Hungarian government, alone in the EU, declared a '[mass migration emergency](#)'. Its first reaction to Covid-19 was introducing a '[pandemic emergency](#)' with an automatic sunset after 15 days without parliamentary authorisation. With that deadline looming, the government tabled the [Act on Protecting against the Coronavirus](#). In the public discourse, it was called the '[Enabling Act](#)' because the parliament was in session, but the Act enabled the government to issue decrees independently of the parliament. The Enabling Act radically differed from its European counterparts. The [Blackstone Chambers](#)' legal opinion concluded that the Hungarian government's extraordinary power was broad in scope and without express temporal limit or strict rational connection to the areas where an urgent response to the pandemic was required. International organisations (the [CoE Secretary-General](#), the [OSCE-ODIHR](#), the [UNHCHR](#), and the [LIBE](#) of the EP) raised concerns about the Enabling Act's impact. So, in mid-June, the ruling majority revoked the Enabling Act and its pandemic emergency, but when it did so, it only [transformed](#) it into a '[medical emergency](#)'.

When the second wave of Covid-19 arrived, the country was in a mass migration emergency and a medical emergency. Yet, the government introduced the third state of emergency, this time, [a state of danger](#). The [powers](#) that Orbán has in the

state of danger are on top of those granted by the two previous emergencies. And with a [constitutional amendment](#), a further step has been taken on the road to full-out authoritarianism. The constitutional amendment substantially [broadens](#) the conditions in which emergencies can be declared. Governing by decrees became the default because the constitutional amendment erased any meaningful role for the parliament. Decrees may suspend laws, deviate from the law and introduce other extraordinary measures. Thus, the Enabling Act and its crafty continuation by a constitutional amendment and subsequent acts have given Orbán unlimited emergency powers. These powers are temporary in the text, but only the prime minister can determine when they are no longer necessary.

Unchallengeable Covid-19 Measures

During the first wave, governments across Central-Europe introduced similar Covid-19 measures, and they coped well with the pandemic: they registered far lower case numbers and death figures than western and southern Europe. They all closed their borders and introduced lockdowns long before the virus reached them. But the Hungarian government went further: it cancelled by-elections already announced and closed the ordinary courts by [declaring](#) an 'extraordinary judicial holiday'. It also criminalised the dissemination of falsehood and distorted facts 'suitable to interfere with the successful protection of the public'. The provision was vague enough to have a [chilling effect](#) and be used against [critics and political rivals](#).

During the second wave, Central-European countries adopted various tactics to handle the pandemic. The Hungarian government tried to downplay the seriousness of the situation. Although it closed the borders to non-Hungarians (except for business and sportspeople) already on 1 September, it did not introduce measures to protect the lives of the populations at risk: schools, universities, shops and restaurants were open, and there was no mask mandate and mass testing. Even the UEFA Super Cup took place in Budapest with ca. 20,000 spectators. To facilitate the grandiose football event, the government made an exception to its own rules and allowed foreign fans to enter the country. A week of record-breaking hospitalisations and deaths changed the situation in early November 2020. Since then, a general curfew between 8 pm and 5 am and a ban on public events (except for church services and sporting events played to empty stands) have been in [place](#).

The third wave arrived in Hungary in mid-February 2021. At that time, the 14-day incidence value was the [highest](#) in Europe. Still, businesses (except for restaurants and bars), shopping malls and schools through grade 8 were open. It was only on 4 March when the government ordered to close non-essential businesses and primary schools.

One of the most restrictive emergency measures of these waves is the complete ban on public assemblies. A decree [stipulates](#) that 'all assemblies are forbidden'. Assembly [means](#) 'a public gathering held with at least two persons to express an opinion in a public affair'. It is a general ban, not a time, manner, and place restriction, and it applies regardless of whether the two or more people follow Covid-19 regulations. Not just public assemblies are banned; the decree also

prohibits gatherings even in open-air private places if more than ten people are involved. Those who do not comply with the regulations [face hefty fines](#).

The absolute ban on the right to gather, together with other rights restrictions, remain de facto unchallengeable because the once well-functioning democratic institutions have been either captured or abolished. Orbán's party controls two-thirds of the parliamentary seats, so the parliament mainly rubberstamps the laws initiated by the government instead of controlling the government. The judicial scrutiny of the emergency measures is also missing. Ordinary courts do not have the competence to review acts and government decrees. Only the Constitutional Court has this competence. Yet, being packed with Orbán's political allies, it is no longer capable of fulfilling its role as a check on the executive. Its lack of independence and impartiality means that the government is free to introduce measures restricting fundamental rights with little fear of being challenged before the Constitutional Court. For a year, several hundred decrees have been passed. Some were meant to tackle the pandemic, others to strengthen the executive power and weaken the fragmented [political opposition](#), including bleeding opposition-led municipalities [dry](#). Yet, the Constitutional Court has not declared these decrees unconstitutional; on the contrary, it [upheld](#) them.

Relying on the Military

Instead of democratic institutions, the military plays a prominent role in the 'fight' against the pandemic. It has been involved in implementing Covid-19 measures; heavily armed soldiers have [patrolled](#) the streets in Hungarian cities to enforce curfew regulations. The military has [sent](#) control teams to the country's strategic companies to 'ensure secure operations of key companies in telecommunications, transport and healthcare'. There has been an increased military presence in [hospitals](#): 'hospital commanders' have been in charge of medical decisions. The National Hospital Directorate-General has been set up and run by the interior minister to maintain state-run healthcare institutions and 'reform' healthcare. There is a shortage of qualified medical staff, so the government requires them to sign new state contracts with raised salaries to be at its disposal. Yet, 5,500 people quit or threaten to quit [over the contracts they say](#) offer unacceptable terms. At least one would expect an efficient vaccination program by deploying the military, but it has just [collapsed](#).

Medical expert bodies like the Hungarian Medical Chamber have no say in handling the virus. The government's Coronavirus Operational Corps is leading the response to Covid-19. Those who represent them publicly are two army commanders in uniforms and one healthcare professional. Since photos and videos must not be taken in hospitals, and independent journalists must not interview medical personnel, the Corps is the only source of information on Covid-19 updates. It regularly provides data on the confirmed cases and death – some but [not all](#) relevant data. For instance, the so-called R-value indicating how many people an infected person has infected further, and the data on intensive care are not provided. The population does not know how many trained medical personnel are available for Covid-19 patients. Besides, the Corps' numbers about those who died because of Covid-19

do not reflect reality. As I write this post, the [official numbers](#) register 16,146 deaths in a country of less than 9,8 million. However, investigative journalists [revealed](#) that the Central Statistical Office's (CSO) data contradicted the Corps' data. The CSO's data demonstrated that the numbers of deaths between October and December 2020 were 40 per cent higher than the numbers of deaths between October and December in 2019, which was not reflected in the official report. Considering the official numbers, Hungary's mortality rate of 3,5 % is the [third-highest](#) worldwide. The plague is far from over, but the loss of life affecting [countless](#) people will be vast.

A Way Out?

The protection against epidemics is one of the state's chief duties, using both medical and regulatory measures, and perhaps the lockdown and its severe consequences are inevitable. Still, Covid-19 cannot explain depriving people of the right to protest peacefully or the right to go to independent court to challenge government measures. These fundamental rights restrictions are deeply problematic under international human rights standards and unprecedented in the EU.

One might wonder whether it makes a difference that all this is happening in an EU member state. Among the conditions for EU membership is the protection of constitutional values: 'the existence of stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'. The primary sanctioning mechanism for values-based non-compliance with EU law is a political process identified in Article 7 TEU. Article 7(1) allows the Council to give a formal warning to a country if it finds a risk of a breach of the EU values. If that does not have the desired effect, it can impose sanctions and suspend voting rights under Article 7(2) and (3).

So far, the EU has continued to stand by (as it has in the past), even as Orbán has assumed unlimited powers. Although in 2018, the European Parliament triggered Article 7(1), this procedure still hangs in the air because the Council had never seen fit to publicly condemn Hungary for failing to meet Europe's constitutional commitments. The other legal process for ensuring the uniform enforcement of EU law, the infringement procedure, allows the Commission to bring member states to the ECJ if it violates EU law. But infringement procedures have long been used for relatively technical violations – nothing so big as a threat to EU values. Not long ago, the ECJ elevated the infringement action so that it can be used to enforce EU constitutional values. With this, the Commission has been given a [way](#) to protect the constitutional commitments. The legal basis of the emergency decrees (especially the constitutional amendment and the Enabling Acts) would provide ample reasons to challenge Hungary through infringement actions. Of course, the Commission would have to be courageous to launch these actions. Yet, there is no sign of such courage. Since the von der Leyen Commission took office in 2019, not a single value-related infringement action has been launched against Hungary. Instead, a toothless new Rule of Law Review Cycle has been [established](#).

So, where shall we return when the pandemic finally burns itself out? Most Europeans hope for the return to 'normalcy': to a properly functioning constitution.

But what does return to 'normalcy' mean for Hungarians? A non-emergency authoritarian rule? It may happen that as soon as the pandemic abates, the people's widespread discontent and anger will be directed against the politicians who abuse their powers. Hard times, however, may also strengthen the populist authoritarian nationalists. It is the people, not the plague, that can change the system. We are witnessing demonstrations from Poland and Belarus through Russia to Myanmar. Yet, Budapest is silent. There are some [signs](#) of resistance there, but large and lasting protests are extremely rare. The current ban on all forms of assembly is just one of the many reasons for it, ['but that is another story and shall be told another time'](#).

